

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA** :

**v.** :

**MITCHELL WHITE** :

**CRIMINAL NO. 18-101-06**

**MOTION TO PRECLUDE CERTAIN SLIDES AND  
TESTIMONY BY GOVERNMENT EXPERT**

The government is expected to call Dr. Stephen Thomas as its expert witness. On December 16, 2021, then-AUSA Jason Bologna provided defense counsel with a power point presentation the government planned to use in Dr. Thomas' testimony. A copy is attached as Exhibit A. Undersigned counsel spoke to Mr. Bologna to gain more understanding of the slides, then, on December 22, 2021 and December 23, 2021, sent to Mr. Bologna (copying AUSA Costello a list of objections to slides 1, 14, 15, 16, 24, 25, and 22. The objections were:

No. 1 – I generally object to Dr. Thomas using the slides for freeform testimony (rather than question and answer), so this slide is unnecessary, and the word “Primer” is objectionable – this is not basic material, and he is not a lecturer.

No. 14 – Regarding the 1500% statistic, this opinion and the reasons and basis for it have not been disclosed as required under Rule 16.

No. 15 – I object to Dr. Thomas (or any witness) testifying as to how or what others “think,” and that line on the slide is objectionable. I reserve an objection to the substance of this slide; you were not able to tell me what it means.

No. 16 – As you noted, this slide sets forth an opinion of Dr. Thomas'. I object to the title – “Universal Precautions in Pain Medicine” (in quotes) as it connotes something more than an opinion.

Nos. 24 and 25 - I object to these slides in their entirety, and to any reference at trial to the opioid crisis and deaths in Philadelphia.

In addition to the objections previously noted, Slide 22 presents what is described as Dr. Thomas' working definition of addiction. There are only three references to addiction in the expert disclosure/report: he opines that one patient (Cottman) was a cocaine addict; he opines that another (Lao) “acted as an opioid addict” by requesting an early refill; and he quotes the word “addict” from a patient chart (Johnson). Dr. Thomas' basis for these two opinions and for his “working definition” have not been disclosed, nor is there anything in his CV that describes his qualifications for opining as an expert on addiction.

See Email communications attached as Exhibit B.

The government did not respond. Prior to the May 2022 trial date, counsel reminded Ms. Costello of the objections. The government did not respond. On January 5, 2023, counsel emailed Ms. Costello and Mr. Parisi, reminding them of and attaching a copy of the outstanding objections. The government has still not responded, more than two years after the objections were made. See Email communication attached as Exhibit C.

On behalf of Mr. White, undersigned counsel therefore brings these objections to the Court. The objections are made under Federal Rule of Criminal Procedure 16 governing the disclosure of expert opinion; Federal Rule of Evidence 702, governing testimony by expert witnesses; Federal Rules of Evidence 401, requiring evidence to be relevant; and Federal Rule of Evidence 403, providing for the exclusion of evidence that is not relevant; and or whose prejudicial value outweighs any probative value.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ann C. Flannery", with a stylized, flowing script.

ANN C. FLANNERY  
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Attorney for Defendant Mitchell White

January 13, 2023

**CERTIFICATE OF SERVICE**

I, Ann C. Flannery, counsel for defendant Mitchell White, hereby certify that on this 13th day of January, 2023, I caused a copy of the foregoing Motion to Preclude Certain Slides and Testimony by Government Expert to be served by ECF upon the following:

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A handwritten signature in black ink that reads "Ann C. Flannery". The signature is written in a cursive, flowing style with a large loop at the end of the last name.

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